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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
The Petition of America's Carriers) RM-8775
Telecommunication Association for)
Declaratory Ruling, Special Relief,)
and Institution of Rulemaking)

REPLY COMMENTS OF THE JOINT PARTIES

The Joint Parties hereby submit their unified reply comments on the above-referenced Petition of America's Carriers Telecommunications Association ("ACTA"). The Joint Parties, either directly or through their memberships, include a wide variety of companies and individuals involved in the development of products and services related to the Internet. Specifically, the Joint Parties are: Commercial Internet eXchange Association; FreeTel Communications, Inc. and Third Planet Publishing Inc.; Microsoft Corporation; Millin Publishing Group, Inc.; Netscape Communications Corporation and Voxware, Inc. New Media Coalition for Marketplace Solutions; Quarterdeck Corporation and VocalTec Ltd; Software Publishers Association; and the VON Coalition.

The Joint Parties stand united in their opposition to ACTA's proposal that the Commission regulate the Internet and, in particular, the providers of software that facilitates two-way voice communications over computer networks such as the Internet.^{1/} To the extent

^{1/} The Joint Parties note that both the National Telecommunications and Information Administration and the National Science Foundation submitted comments urging the Commission to deny ACTA's Petition forthwith.

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necessary, the Commission should apply its well-established forbearance policy to the Internet. The purpose of the Commission's forbearance policy is to rely on market forces to the greatest extent practical. Here, it is clear that the voice services cited by ACTA do not enjoy any market power, and that the public interest is therefore best served by leaving them unregulated. The Joint Parties also reject as absurd ACTA's position that the Commission should order the named software companies to immediately stop "arranging for, implementing, and marketing non-tariffed, uncertified telecommunications services" that ACTA claims do not comply with the Communications Act, §§ 203 and 214. Finally, the Joint Parties urge the Commission to limit the scope of the instant proceeding to the issues raised by ACTA and disregard the suggestions of some parties to use the ACTA petition as the basis for broadly examining such issues as the definition and regulation of enhanced services. There is no need for the Commission to commence a "Computer IV" inquiry in order to resolve the issues raised by ACTA.

In support of these views, the Joint Parties submit the following:^{2/}

1. The unfettered development of the Internet is important and in the public interest.

The unfettered development of the Internet and VON has led, and will continue to lead, to the emergence of important new services. The Internet enables millions of citizens to communicate in new ways, opening up a vast array of opportunities in education, health care, commerce, and entertainment. While ACTA argues that Commission regulation is necessary to protect the development of the Internet, the Joint Parties are unified in their belief that such regulation is not needed and would slow innovation in this vibrant new medium. Thus, the Joint

^{2/} The Joint Parties also endorse the point made by CompuServe in its comments that the ACTA Petition is procedurally defective since it does not set forth the text or substance of the proposed rule or regulation. 47 C.F.R. § 1.401(c).

Parties respectfully urge the Commission to make the public interest in a free, dynamic Internet its paramount concern and deny ACTA's proposal, a policy scheme designed to protect the economic self-interest of a narrow group of companies at the cost of a variety of beneficial new services.

2. Software developers and vendors are not “telecommunications carriers.”

ACTA contends that software developers and vendors are “Telecommunications Carriers” as defined in the Telecommunications Act of 1996 (the “Telecom Act”) and can therefore be subject to Commission regulation. The Joint Parties and almost all of the other parties submitting comments disagree with ACTA's analysis. Clearly, software providers only sell their software products, and do not provide any *transmission* services. Thus, they do not provide “telecommunications.”

As the providers of VON software do not offer a “telecommunications service,” the Commission lacks authority to regulate these entities as “telecommunications carriers” under Title II of the Communications Act.^{3/}

3. Commission regulation of the Internet would conflict with explicit congressional policy.

Nowhere does the Telecommunications Act provide any basis for ACTA's proposal. In fact, ACTA's petition directly contravenes key provisions of the Act. Specifically, in Section 230 of the Act, Congress made clear that the Internet is to remain free from Commission regulation. Section 230(a)(4) includes the finding that “[t]he Internet and interactive computer

^{3/} Several parties note that, even if the Commission could assert ancillary jurisdiction over software developers, the Commission should view such software as analogous to customer premises equipment, which the Commission has properly chosen not to regulate.

services have flourished, to the benefit of all Americans, with a minimum of government regulation.” Section 230(b)(2) declares that it is the “policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation . . .” In addition , Section 223(e) clarifies that “[n]othing in this section [concerning restrictions on obscene communications via telephone facilities or interactive computer services] shall be construed to treat interactive computer services as common carriers or telecommunications carriers.” 47 U.S.C. § 223(e)(6).

4. Any plan to regulate VON services is impractical, as it is impossible to distinguish between voice packets and other data packets.

Even if the Commission contravened congressional policy and deemed VON software providers “telecommunications carriers,” common carrier regulation of VON services would be impossible from a practical standpoint. Internet service providers currently cannot discern between voice and non-voice transmissions. Voice and non-voice data packets are basically indistinguishable and are handled similarly by the hardware and software comprising the Internet. Thus, regulation of VON service would require the Internet service industry to fashion and deploy sensors that could recognize voice traffic amidst the Internet’s staggering flow of digital bits. The cost of developing such a device would be immeasurable, and the presence of such sensors would dramatically impede the flow of *all* information through the Internet’s networks. Such a development is simply not feasible

5. The volume of Internet use for anything resembling telephony is not significant and does not require urgent attention.

Even if VON software providers were deemed “telecommunications carriers” and the Internet industry developed a satisfactory means of distinguishing between voice and non-voice

data packets, the Joint Parties believe that Commission intervention would still not be warranted in the current instance. Voice communication via the Internet is in its incipient stage, and the amount of voice traffic currently on the Internet is *de minimis*.

6. The Commission should not change its policies for enhanced service provider payment for access charges.

In their comments, ACTA and several other parties sought to use the development of two-way audio on the Internet as a reason to overturn the existing policies concerning the treatment of enhanced services in connection with access charges. The Joint Parties strongly urge the Commission not to make such a radical change or even consider such an action in this proceeding. The current treatment of enhanced services is fair, it has had the intended consequence of permitting enhanced services to develop, and its modification could have a serious consequence for the continued development of these services. Moreover, enhanced service providers are not subject to the universal service obligations of the Telecommunications Act.

The Commission has another proceeding pending that deals with access charges and universal service. Any consideration of this issue should take place in that proceeding.

CONCLUSION

For the above reasons, the Joint Parties respectfully urge the Commission to deny the ACTA Petition.

Respectfully submitted.

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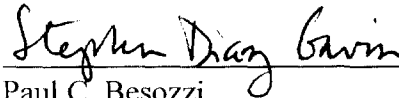
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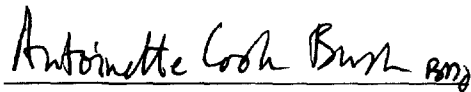
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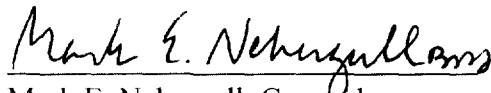
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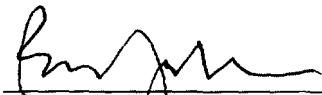
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CERTIFICATE OF SERVICE

I, Cynthia Smith, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 10th day of June, 1996, I served a true copy of the foregoing "Reply Comments of the Joint Parties" by first class United States Mail, postage prepaid, upon the following:

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